

R E M A R K S

1. CLARIFICATION REGARDING DRAWING CORRECTIONS

The Office Action dated November 20, 2004 indicates that the proposed drawing correction filed on 20 August 2002 is approved, and that corrected drawings are required in reply to the Office Action.

The Applicant believes this to be a typographical error.

The Applicant submitted corrected drawings on March 10, 2003 by way of a certificate of mailing.

Paper No. 8, dated April 3, 2003 indicated that the "proposed drawing correction filed 17 March 2003 is approved by the Examiner."

Clarification is respectfully requested.

2. CORRECTION TO REQUIREMENT FOR APPEAL BRIEF

The Advisory Action dated February 27, 2004 indicates that a "Notice of Appeal" was filed on 07 August 2003. According to 37 C.F.R. § 1.191(a), a notice of appeal must be from "the decision of the examiner." A new decision of the examiner issued November 20, 2003.

Applicant respectfully submits that the new Notice of Appeal, accompanying herewith, resets the clock for filing Applicant's Appeal Brief in accordance with 37 C.F.R. § 1.192(a).

Confirmation is respectfully requested.

3. REQUEST FOR NEW OFFICE ACTION

The Applicant respectfully submits that the final Office Action dated November 20, 2003 is incomplete, and respectfully requests new action.

37 C.F.R. § 1.104(b) requires an Office Action to be "complete to all matters" and 37 C.F.R. § 1.104(c)(2) further

clarifies that "[t]he pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." In this case, the Detailed Action dated November 20, 2003 states:

1. The **finality** of the rejection of the last Office action, paper number 14 of October 9, 2002 has been withdrawn. As such, the following action applies.

However, the "finality" and the "rejection itself" are two different things, which Applicant submits are neither trivial nor obvious. M.P.E.P. § 706.07(e), ¶¶ 2, 4 are instructive:

. . . Occasionally, the **finality** of a rejection may be withdrawn in order to apply a new ground of rejection.

. . . Normally, [to withdraw a final rejection for the purpose of entering a new ground of rejection,] the **previous rejection** should be withdrawn with respect to the claim or claims involved. (emphasis added).

M.P.E.P. § 706.07(e), ¶¶ 2, 4 presume that a previous "rejection" as distinguished from its "finality" is maintained if not withdrawn. The Office Action dated November 20, 2003 fails to indicate whether or not the prior rejections have been withdrawn or whether the prior references are continued to be applied to the claims in accordance with 37 C.F.R. § 1.104(c)(2).

Applicant respectfully submits that a **new** action, even if the new action is final, is required to address this incompleteness.

Applicant respectfully submits that this is not a typographical error, such as a miss-typed patent reference number, that may be corrected under M.P.E.P. § 707.05(g) with a letter of correction or Advisory Action. In this regard, Applicant respectfully submits that 37 C.F.R. § 1.104 does not

require citation of a patent "reference numbers" per se, as long as the reference is identified. On the other hand, § 1.104(b) requires completeness as to all matters, and § 1.104(a)(2) requires that the reasons for all adverse actions be stated.

In this case, the rejections set forth in the Office Action dated October 9, 2002 were never withdrawn, and as such the Office Action dated November 20, 2003 fails to address these rejections in accordance with § 1.104.

Applicant respectfully requests the issuance of a new Office Action clarifying all rejections and withdrawing non-relevant rejections in accordance with § 1.104.

#### 4. REQUEST FOR CONFIRMATION OF PRIOR FILED DECLARATION

The Office Action dated November 20, 2003, page 3, states that "no evidence of commercial success" has been presented. Page 2 indicates that the Declaration filed 08/20/02 relates to "lack of utility of a prior art reference." Applicant respectfully believes that confusion has resulted in this case.

Applicant submitted a Declaration of Eric Udler under 37 C.F.R. § 1.132 on September 13, 2002 that was acknowledged by the examiner in the Office Action dated October 9, 2002, page 2. The October 9, 2002 action also stated that the Declaration was "not germane to the rejections at issue."

Applicant respectfully submits that the Declaration of Eric Udler relates to commercial success. The Declaration states, *inter alia*, "I have had occasion to personally view the commercial success of the COMFORT TRAINER."; "The COMFORT TRAINER has been successfully exhibited at a number of Super Pet Expo trade shows with commercial success."; "The COMFORT TRAINER was successfully offered for sale at the most recent Super Pet Expo, April 6-7, 2002 in Chantilly, VA. At the April show, the COMFORT TRAINER was sold out of product."

Applicant currently offers a commercial embodiment of her invention for sale under the mark COMFORT TRAINER.

As an aid to the examiner, a courtesy copy of the Declaration of Eric Udler is re-submitted as Exhibit 6. A copy of the facsimile transmission letter is submitted as Exhibit 7, and a copy of the fax machine receipt is submitted as Exhibits 8. A copy of a paper product label that is configured to fit within a plastic sales container for a commercial embodiment of the present invention is submitted herewith as Exhibit 9.

The examiner is reminded that page 2 of the "SECOND SUPPLEMENTAL AMENDMENT SUBMISSION OF 132 DECLARATION SPECIFICATION AND CLAIM SUBSTITUTE PARAGRAPHS" dated September 13, 2002 indicates that the Declaration was to "Eric Udler."

The examiner is kindly requested to re-review the Declaration of Eric Udler and the "SECOND SUPPLEMENTAL AMENDMENT . . . " and confirm that we are discussing the same Declaration of Eric Udler. If the Declaration in the records of the USPTO does not match Exhibit 6, and/or if the examiner did not receive the "SECOND SUPPLEMENTAL AMENDMENT . . . " referencing the Declaration of Eric Udler, the Examiner is kindly requested to contact the undersigned so that correction may be made.

It is respectfully submitted that Exhibits 7-8 provide the appropriate evidence to establish that Applicant did file the Declaration of Eric Udler on the date indicated.

##### 5. REQUEST FOR COURTESY COPY OF CONTINUATION SHEET

The Office Action dated April 3, 2003 indicates that a "continuation sheet" was attached. The records of the undersigned attorney do not indicate that said continuation sheet was received.

The examiner is respectfully requested to furnish the undersigned with a courtesy copy of said continuation sheet so that Applicant's records may be complete.

6. REQUEST FOR CONFIRMATION OF PRIOR AMENDMENTS

The "continuation sheet" referenced in item 5 above (accompanying the Office Action dated April 3, 2003) may have included the confirmation of prior amendments requested in Applicant's Amendment After Final dated March 10, 2003. If not, and as a respectful reminder, Applicant requested in the Amendment After Final dated March 10, 2003 confirmation of consideration and entry of the Amendments dated:

August 8, 2002; August 20, 2002; and September 13, 2002.

The Declaration of Eric Udler accompanied the September 13, 2002 Amendment.

Copies of postcard or facsimile receipts showing entry of all above amendments are available via facsimile upon request. The examiner is invited to telephone the undersigned at the number listed below for courtesy copies of any and all filings and/or receipts.

7. REQUEST FOR LEGAL STANDARD AS BASIS FOR REJECTION

In the Office Action dated November 20, 2003, a number of obvious rejections were made based on "holdings." It is respectfully believed that these "holdings" are either court or Board decisions.

Applicant respectfully requests citation of authority for the "holdings" cited in the Office Action dated November 20, 2003 as follows:

A. page 4, lines 2-4 (with regard to claims 7-10) ". . . **it has been held** that forming in one piece an article which has been

formed in two pieces . . . and put together involves only routine skill in the art."

B. page 4, lines 10-12 (with regard to claim 15) ". . . since **it has been held** to be within the general skill of a worker in the art to select a known material on the basis of it's suitability for the intended use as a matter of obvious design choice."

8. REQUEST FOR RECONSIDERATION IN VIEW OF APPLICANT'S EXHIBITS

Applicant submits herewith Exhibits 1-14, wherein a cover sheet is also submitted and attached to the Exhibits, as follows:

Exhibits 1-5 correspond to exhibits attached to the Appeal Brief dated August 7, 2003.

Exhibit 6 is a re-submission of the Declaration of Eric Udler filed September 13, 2002 because the Office Action dated November 20, 2003, page 3, stated that no evidence of commercial success has been presented.

Exhibit 7 is copy of the facsimile transmission letter dated September 13, 2002 transmitting the Declaration of Eric Udler.

Exhibit 8 is a copy of a facsimile transmission receipt indicating receipt of the Declaration of Eric Udler by the USPTO on September 14, 2002 at 12:45.

Exhibit 9 is a copy of a product label that is configured to fit within a sales container for a commercial embodiment of the present invention, sold under the mark COMFORT TRAINER.

Exhibit 10 is a Declaration of Alice DeGroot submitted in response to the new reliance by the examiner on DeGroot, U.S. Patent No. 4,483,275 in the Office Action dated November 20, 2003.

Exhibits 11-14 are additional submissions of evidence of commercial success provided in response to the statements of the examiner that evidence of commercial success is not germane to

the present application. Applicant respectfully disagrees and submits that evidence of commercial success is germane to the present application.

Applicant respectfully requests confirmation of consideration of the above Exhibits for the reasons set forth above. As a courtesy, the Examiner may wish to photocopy the cover sheet provided and initial next to each Exhibit.


CONCLUSION

The examiner is respectfully requested to clarify the record for appeal and confirm consideration of the Exhibits filed herewith. It is believed that the clarifications and Exhibits, taken with the arguments set forth in the prior non-entered Amendment After Final, which are incorporated herein by reference, place the application in condition for allowance. Should the Examiner have any questions after reviewing this Request for Reconsideration, the examiner is cordially invited to telephone the undersigned attorney.

Favorable consideration and allowance are earnestly solicited.

Respectfully submitted,

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TEM/sef

  
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Todd E. Marlette  
Registration No. 35,269

**SUMMARY OF EXHIBITS  
FOR CONSIDERATION BY EXAMINER**

Atty Docket

MFB-0001

Serial No.

09/736,408

Applicant

Miriam Fields-Babineau

Filing Date

Dec. 15, 2000

Group Art Unit

3644

**OTHER** (Including Author, Title, Date, Pertinent Pages, etc.)

Exhibit 1 Thomas Register 1999, pg. COR/10976, CORDAGE: BRAIDED.

Exhibit 2 Thomas Register 1999, pg. COR/10930, CORD: DOG LEASH.

Exhibit 3	Western filament, Inc., 2002 on-line product catalog, pg. 200-203, Flat Braided Tapes, Lacing and Spot Tying Materials, and Lacing Tapes, as of April 28, 2003.
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Exhibit 4	Oxford English Dictionary Online, 2003 Oxford University Press, dictionary definition for "flat", pg. 1-30, <a href="http://dictionary.oed.com">http://dictionary.oed.com</a> .
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Exhibit 5	Oxford English Dictionary Online, 2003 Oxford University Press, dictionary definition for "lofted", pg. 1, <a href="http://dictionary.oed.com">http://dictionary.oed.com</a> .
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Exhibit 9	\$ 132 Declaration of Eric Udler, president, Super Pet Expo, dated September 12, 2002.
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Exhibit 7	Copy of the facsimile transmission letter dated September 13, 2002 transmitting, <i>inter alia</i> , the Declaration of Eric Udler.
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Exhibit 8	Copy of a facsimile transmission receipt indicating receipt of the Declaration of Eric Udler by the USPTO on September 14, 2002 at 12:45.
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Exhibit 9	Copy of a paper product label that is configured to fit within a plastic sales container for a commercial embodiment of the present invention.
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Exhibit 10	§ 132 Declaration of Alice De Groot, BS., MS., DVM, dated February 4, 2004, and inventor of U.S. Patent No. 4,483,275 and 4,566,255.
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Exhibit 11	"Tackett's Mill Veterinary Hospital," letter dated March 28, 2003 from Aileen Tubbs, Veterinary Practice Manager.
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Exhibit 12	"Carol's Positive Dog Training," letter dated <del>December 11,</del> 2003, pg. 1 <del>x-2</del> . <i>Sept. 15,</i>
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Exhibit 13	"To Whom it may Concern," letter dated March 25, 2003 from Susan Sharpe <a href="mailto:sus@anxietywrap.com">sus@anxietywrap.com</a>
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Exhibit 14	"Another glowing report on the Comfort Trainer," dated March 22, 2003 from Mary & Bee, <a href="mailto:teddybsmom@cox.net">teddybsmom@cox.net</a>
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Examiner

Date Considered

EXAMINER: Due to the large number of Exhibits, the Examiner is kindly requested to initial along side each exhibit and include a copy of this form with next communication to Applicant.